

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GREG WILBERGER, as Personal
Representative of the Estate
of BROOKE WILBERGER, decedent,

Civ. No. 09-6042-AA

Plaintiff,

ORDER

v.

LIBERTY MUTUAL INSURANCE COMPANY,
a Massachusetts Corporation, and
LIBERTY INTERNATIONAL UNDERWRITERS
CANADA, a division of Liberty
Mutual Corporation,

Defendants.

AIKEN, Chief Judge:

Plaintiff Greg Wilberger, acting as the personal representative of the estate of Brook Wilberger, sued Creative Building Management (CBM) for the negligent hiring and supervision of Joel Patrick Courtney. Courtney allegedly abducted and murdered Brooke Wilberger while employed by CBM, and Courtney has been charged with these crimes and is currently awaiting trial in Benton County, Oregon. Plaintiff filed this declaratory judgment action

against defendants, who insured CBM during the relevant time period. Plaintiff asks this court to determine if insurance coverage exists for the underlying negligence action against CBM.

Defendants move to dismiss plaintiff's claim under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Specifically, defendants argue that 1) Oregon law prohibits plaintiff from initiating this lawsuit without having obtained a judgment against CBM in the underlying lawsuit, and 2) principles of res judicata bar this claim because defendants filed a similar declaratory judgment action against CBM in Canada. Plaintiff responds that Canadian law applies and allows a declaratory judgment at this stage in the proceeding.

For purposes of this motion, it does not matter whether Canadian or Oregon applies. Recently, I granted CBM's motion for summary judgment in the underlying negligence action, and plaintiff's claim for declaratory judgment is now moot.

Conclusion

Defendants' motion to dismiss (doc. 3) is GRANTED, and plaintiff's claims are hereby DISMISSED.

IT IS SO ORDERED.

Dated this 19 day of June, 2009.

/s/ Ann Aiken

Ann Aiken
United States District Chief Judge